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No. 00-360

Supreme Court, U.S.
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IN THE SUPREME COURT OF THE UNITED STATES

UNITED STATES OF AMERICA, PETITIONER

v.

CYPRUS AMAX COAL COMPANY, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

SUPPLEMENTAL BRIEF OF THE UNITED STATES

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Pursuant to Rule 15.8 of the Rules of this Court, the United States submits this supplemental brief to respond to the suggestion of respondent that the recent decision of this Court in Hatter v. United States, No. 99-1978 (May 21, 2001), has relevance to the disposition of this petition.

1. In the petition, we note that the court of appeals erred in this case in suggesting that its prior decision in the Hatter case provided support for its holding that this suit to recover taxes is not subject to the restrictions on tax refund suits established by Congress in 26 U.S.C. 6511, and 26 U.S.C. 7422(a). Pet. 18. We pointed out that the Hatter case was a suit to recover "compensation" and was not a suit to challenge the validity of, or to seek a refund of, any tax. Pet. 18. Because it was a suit to recover "compensation," the action in that case was not subject to the restrictions on tax refund suits that are involved in this case. See ibid. We made this same point in

our brief on the merits in this Court in the Hatter case. U.S. Br. No. 99-1978 at 8-9 n.7.

In this Court's decision in Hatter, the Court made this same distinction. Although the Court did not find it necessary to address this issue in any detail, the opinion in Hatter emphasized that the suit in that case was brought by the judges "for `compensation' in the United States Claims Court." Slip. Op. 5. Thus, far from providing any support for the erroneous decision in the present case, the decision in Hatter endorses the understanding that jurisdiction in the Court of Claims in that case was based on a claim for recovery of "compensation" rather than on a claim for the refund of "taxes." The decision of this Court in Hatter thus plainly does not support respondent's erroneous suggestion that jurisdiction of an action for the recovery of taxes exists under the Tucker Act "independently of the tax refund statute." Resp. Supp. Br. 2.

2. Respondent errs in asserting (Resp. Supp. Br. 1) that the decision of this Court in Hatter provides support for the conclusion of the court of appeals in the present case that a claim for the recovery of allegedly unconstitutional taxes need not comply with the statutes that govern "the recovery of any internal revenue tax" (26 U.S.C. 7422(a)). Nothing in Hatter addresses in any fashion the detailed statutory scheme enacted by Congress that limits actions "in any court" (ibid.) for the recovery of a tax. It is precisely because the court of appeals held in this case that suits for the recovery of an internal revenue tax may be brought in that circuit without complying with these governing statutes that review is warranted in this case. See Pet. 18-19 ("[t]he decision of the court of appeals not only voids the

administrative prerequisites for a tax refund suit, it also alters the statute of limitations that applies to such suits").

Moreover, nothing in Hatter addresses (and certainly does not overrule) the decision of this Court in United States v. A.S. Kreider Co., 313 U.S. 443 (1941). The decision of the court of appeals in the present case conflicts directly with that controlling precedent of this Court. See Pet. 20-22.

Respectfully submitted.

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